1874—No. 61.]

CASES AND OPINIONS

OF

GERALD FITZGIBBON, Esq., Q.C.,

AND

SIR COLMAN O'LOGHLEN, Bart., Q.C.,

UPON

The Rights and Powers of the Corporation

OVER THE BED AND SOIL OF THE RIVER LIFFEY.

DUBLIN:
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CASE

To Advise on behalf of the Corporation of the City of Dublin.

In the summer of 1870 a Memorial was presented to the Lord Lieutenant of Ireland, signed by several of the inhabitants of the quays in the City of Dublin, complaining, in the words of the 49th section of the Sanitary Act 1866 (29 & 30 Vic., c. 90), that the Corporation of Dublin, as a sewer authority, had made default in providing its district with sufficient sewers, and that by reason thereof the River Liffey had become in such a state as to be a nuisance and injurious to the health of the citizens; and the prayer of such memorial was, that the Lord Lieutenant should institute inquiry into the matter of such complaint, and that if he was satisfied thereon, that the Corporation had been guilty of the alleged default, he should make an order limiting the time for the performance by the Corporation of its duty under the said Sanitary Act. In compliance with such prayer, the Lord Lieutenant did institute the necessary inquiry, and expressed himself satisfied that the Corporation had been guilty of the alleged default, and made an order upon that body for the performance of its duty in the matter of the said complaint; but at the request of the Corporation, and upon a consideration of the difficulties then shown to be in the way, the Lord Lieutenant postponed the limiting of the time for the performance of the duty. The

Corporation thereupon took immediate steps to obey the said order, and applied to Parliament and obtained a Private Act of Parliament, by which they were enabled to construct a system of main drainage and sewerage in the City of Dublin, which system should communicate with two large new intercepting sewers, one at each side of the River Liffey, whereby all the sewage matter of the City of Dublin would be prevented from entering the said river, and would be carried to a point opposite the North Bull at Dollymount, and thence discharged into the sea. This system was in accordance with the opinions expressed by the several eminent engineers who had been employed by them for the purpose of ascertaining the best means of carrying out the order as made by the Lord Lieutenant. A copy of the said Act is herewith sent.

Of course it took some time for the engineers to develop the several plans for the performance of the work throughout all parts of the City and County of Dublin for the carrying out of that Act, and for the purpose of arranging to receive the sewage of the several townships which have always hitherto drained into the Liffey and its tributaries. The plans are now complete, and the Corporation advertised for contractors to carry them out. The sums mentioned in the several contracts, however, are all far in excess of what was originally estimated, and in excess of the corporate borrowing powers for the said main drainage, and thus the matter stands at present. The Corporation, however, have reduced the plans by eliminating from them several expensive materials, and taken new tenders for the works so reduced, but the lowest is still in excess of the borrowing powers.

The nuisance caused by the Liffey, however, meanwhile, is each year upon the increase, and several plans

have been proposed by several influential citizens of Dublin for its temporary abatement; amongst others, one has been proposed by Mr. Warren, T.C., which, without going into details, will interfere with the soil of the River Liffey, and may affect its navigation.

A Report from the Public Health Committee of the Corporation, submitting Councillor Warren's plans for the abatement of the nuisance having been read at a meeting of Council, the following Resolution was passed :—"That this matter be referred back to the Public Health Committee to obtain counsel's opinion as to the powers of the Corporation as regards the bed of the River Liffey."

A few days subsequent to the passing of this resolution, viz., on the 22nd June, 1874, a Special Meeting of the Municipal Council was held in the City Hall, for the purpose of considering a Resolution of the Main Drainage Committee, and the Report of that Committee for the half-year to December, 1872.

The chair was occupied by Alderman Manning, *locum tenens* for the Lord Mayor.

The Chairman said he had received an important communication, which came upon him by surprise, which he would read before proceeding with the business on the paper. The communication is as follows :—

"Dublin Castle,
"22*nd June*, 1874.

"Sir,

"Adverting to my letter of the 18th instant, I am directed by the Lord Lieutenant to acquaint you, for the information of the Municipal Council, that his Grace has felt it his duty specially to consider whether some plan might not be devised for affording temporary relief from the intolerable nuisance caused by the present state of the Liffey; and he desires me to forward herewith the enclosed plan, which, he thinks, will effect the object in view at a small cost, and which, further, admits of rapid execution.

His Grace requests that you will at once submit this plan to the Municipal Council, and he hopes that it may be accepted by them and carried out with as little delay as possible. His Grace desires me to add, that if the Council are not prepared to accept his plan in a complete or modified form, and fail immediately to propose any other plan which will relieve the city from this nuisance, he will have to take into his consideration whether it will not become his duty to call upon the Local Government Board to exercise at once the powers vested in them under the Sanitary Acts, and make an order on the Council for the execution of the work within a limited period, and if not executed within that time, to direct the Commissioners of Public Works to execute the work at the expense of the Council. In order to facilitate the consideration of his plan, his Grace has desired Mr. Roberts, the assistant Commissioner of the Board of Works, to wait upon the Council and explain to them all necessary details. In conclusion, his Grace desires that it may be distinctly understood that the plan which he now proposes is to be considered merely as a temporary expedient, and will not relieve the Council of the duty of expediting as far as possible the commencement of the important work connected with the main drainage of the city.

"I am, Sir,

"Your obedient servant,

"T. H. BURKE."

Mr. Roberts, at such meeting of the Corporation on the 22nd June, 1874, said the following plan has been suggested by his Grace the Lord Lieutenant as a temporary arrangement for preventing the escape of offensive effluvia which now rise from the bed of the River Liffey during the time it is exposed at low water: "To divide the section of the river (described in the plan) into three steps or divisions by the erection of three weirs across the channel, so arranged in height as to impound behind each a sufficient depth of water to cover the entire bed of the river. The fall in the bed of the river, between the points referred to, is about 4½ feet, so that the formation of three weirs of about two feet six inches, or three feet in height, will be sufficient to effect that object, and the fall at each will then be about eighteen inches. With the view of guard-

ing against the tendency of these weirs to accumulate silt behind them, and to prevent, as far as possible, their being an obstruction to the navigation of the river, it is proposed to construct them in the manner shown on the annexed sketch. The wings or sides are to extend from the quay walls on each side in an oblique direction down stream, forming an angle of about forty-five degrees with the quay walls, and extending to within fifteen feet of the centre of the river, thus leaving a clear opening of thirty feet, which it is proposed to fill in with falling sluices, constructed on the principle of the barrages on the Seine, which can be readily closed or opened for current and navigation by means of a small barge fitted with proper appliances. They should be closed on the ebb tide a short time before the water falls to the level of the top of the weirs, and opened on the flood tide rising again to the same level. By this means the current of the river will be concentrated in the centre of the channel, and it will not be interfered with to any injurious extent, and there will be a clear centre opening of thirty feet for navigation, which should be defined by piles extending to above high water. The sides or wings of these weirs are to be formed of sheet piles, driven a sufficient depth into the bed of the river, caulked and backed with a small quantity of rubble stone, packed on the down-stream side to prevent the action of the water cutting away the bed of the river below, and undermining them. To guard against the action of the current in the centre opening, it is proposed to construct a substantial floor of timber sheeting, well secured to capping pieces fixed to the heads of piles; the space between which might, if necessary, be filled in with cement concrete. A strong timber cell is to be constructed across the opening, to which the sluices are to be hinged,

and they are to be provided with proper appliances for lowering or raising them, and securing them to their position when raised. This temporary arrangement, or such modification of it as the nature of the foundations and section of the river may render necessary, is suggested by his Grace the Lord Lieutenant as a simple and inexpensive manner by which the nuisance now so much complained of will, to a very great extent, be prevented until the proposed Main Drainage scheme is carried out. It admits of being rapidly executed. Its total cost will not probably exceed £1,200; and there is every reason to expect that its execution will realize to a very great extent the object in view." Mr. Roberts said the Lord Lieutenant had suggested the plan himself, and he (Mr. Roberts) had attended to give any further information on the subject that might be required.

The Chairman asked had the plan been approved of by the Board of Works?

Mr. Roberts replied that it had not been submitted to them.

The Chairman wished to know, supposing the Corporation gave the sum of £1,200 to the Port and Docks Board, would that be deemed sufficient for the carrying out by them of the plan suggested?

Mr. Roberts could not say; the matter had not been submitted or explained to the Board of Works.

Sir James W. Mackey—Is it your opinion that the plans can be carried out for £1,200?

Mr. Roberts could not say definitely.

Alderman Redmond thought there should be a conference held with the Port and Docks Board engineer, Mr. Stoney, and the engineer of the Corporation, for the purpose of seeing the practicability of the plan now pro-

posed, and of taking, if deemed feasible, immediate steps to carry it out. To-day, however, he did not see that they could do anything beyond referring the matter to the engineers for their report upon it, with an expression as to the probable expense.

He, Alderman Redmond, was strongly of opinion that the plan should be referred to Mr. Stoney and their engineer. He would now move a resolution to that effect—"That the subject be referred to Mr. Stoney, engineer of the Port and Docks Board, the engineer of the Corporation, and Mr. Roberts, so that steps be at once taken with a view of having the scheme brought before the Port and Docks Board on Thursday, and before the Council on Friday next." The Board meet on Thursday, and it would be an advantage to have the report of the engineers before anything was done.

Mr. James Reilly seconded the proposition of Alderman Redmond. He did not think a week too long to consider the subject.

Mr. Dennehy said this very question would be before the House of Commons that evening, and there was not a moment to lose in having the matter considered, and, if possible, settled. It should be dealt with at once. He had a very strong opinion that they might carry out a system of main drainage very cheaply. He thought the proposition of Alderman Redmond an exceedingly good one.

The Chairman said he wished to be understood by the public that the Corporation were always anxious to have this question settled, but they were under the impression that they could not legally adopt any plan such as that now suggested. The Government had now, however, taken the matter up, and, no doubt, the plan would be made legal.

Alderman Redmond said Mr. Roberts wished his name to be omitted, and that the consultation should be between Mr. Stoney and the Corporation engineer.

The Chairman said they were always anxious to do what was proposed, if they had the power.

Sir J. W. Mackey was very glad to hear this publicly expressed.

Alderman Redmond's proposition was then put and adopted.

The difficulty expressed by the Chairman at the said meeting of the Corporation, that that body could not legally adopt any plan interfering with the bed of the river, or impeding the navigation of the river, such as those now suggested, is the matter upon which the opinion of Counsel is desired.

In dealing with this matter, a question may be suggested whether any ancient charter conferred any right to the River Liffey upon the Corporation, and it is but proper to refer Counsel to the only charters on the subject which can be discovered amongst the Corporation Records.

The first charter, Anno 1192, 3 Richard I., and John Lord of Ireland, granted and confirmed to the citizens of Dublin, all such property within their limits as same were perambulated, with all the rights and liberties, and subject to the limitations and conditions defined in said charter, including the right to all lands and waste places within their boundaries, excepting only the possessions specially granted by charter to other persons. To hold to the citizens and their successors for ever, in free burgage, by the service of landgable.

The second charter, November 9th, 1200, 2 John, also defines the boundaries of the city, as then lately ascertained by perambulation, and therein set forth and

amplified by chartered privileges previously granted. To hold all their liberties and free customs as previously described, and in addition granted to the citizens and their heirs, one moiety of the river Avenlithe (Liffey), for fishing.

King Henry III., in the 13th year of his reign, 14th June, 1229, in addition to other charters, granted the privilege to elect a mayor, and to build a bridge over the Liffey, and also granted the remaining moiety of that river (excepting certain boat fishings held by ancient tenures), and all lands and liberties comprised in previous charters. To hold for ever, subject to a crown rent of 200 marks, reserved by a previous charter of 17th June, 1215.

The right of salmon fishing in the River Liffey is demised by the Corporation by lease, together with certain islands in said river, and a mill at Island-bridge.

The Corporation also receive as part of its ancient revenue the harbour dues, called slippage and anchorage dues, paid for vessels entering or frequenting the Liffey.

King Charles II., by his charter of May 22nd, 1665, committed the ferries over the Liffey to the charge of the Corporation of Dublin, and their successors, with liberty to carry passengers over said water, and granted to them and their successors all fees to arise therefrom, subject to a yearly crown rent of £4 Irish, no other person to keep boat for gain or hire at any place from Bridge of Dublin to Ringsend. This rent is paid to the Collector of Inland Revenue, Custom House, Dublin. The ferries are demised by the Corporation by a lease, annual rent of £309 4s. 6d.

It must be observed that the lands comprised in the several charters aforesaid, also include the banks of the

River Liffey, which were, and have been since built upon. No special reference is made in said charters to the bed of the said river, or the water therein as aforesaid.

Now the several Irish statutes which contain enactments with reference to the River Liffey, are as follows :—

26 Geo. III., c. 19.
26 Geo. III., c. 50.
26 Geo. III., c. 60.
32 Geo. III., cc. 26, 35, 40.
40 Geo. III., cc. 47, 73.

Counsel will perceive, upon looking at the said statutes, that up to a certain period the Corporation had the control and care of the River Liffey; for instance, the 26 Geo. III., c. 19, section 46, enabled the Lord Mayor to fine parties who were guilty of casting dirt into said river, or into any common sewers communicating therewith. But it appears by the 51st of Geo. III., c. 66, sec. 10, that henceforth the care, management, and superintendence of the whole of said River Liffey, and its quays and walls, are vested in the Corporation for Preserving and Improving the Port of Dublin and their successors for ever. This latter body had obtained their powers under and by virtue of the Act 26 Geo. III., c. 19. By the Dublin Port Act, 1867, 30 & 31 Vic. (copy of which is herewith sent), sec. 2, the Corporation for Preserving and Improving the Port of Dublin shall be the Dublin Port and Docks Board, and by section 79 of said last mentioned Act, the provisions of the Acts relating to the Corporation for Preserving and Improving the Port of Dublin shall remain unaffected by the constitution of the new Port and Docks Board, therein referred to, and, with certain restrictions, shall, in all respects, continue and be as if said Act had not passed.

The attention of Counsel is particularly requested to the aforesaid statute of 51 Geo. III., c. 66, and to all the subsequent statutes relating to the powers of the Corporation for Preserving and Improving the Port of Dublin over the River Liffey, with a view of considering the effect of an interference with the River Liffey, such as hereinbefore is described by the Corporation of Dublin while acting as the Nuisance Authority for the City of Dublin, under the Sanitary Act, 1866, and the statutes incorporated therewith; and Counsel will please advise the said Corporation whether they can legally carry out by any power vested in them under any statute the works proposed by Mr. Roberts, by direction of the Lord Lieutenant, for the purposes aforesaid, and, in addition, what extent of liability, if any, will be incurred by the Corporation of Dublin, if that body now proceeds to abate the nuisance caused by the River Liffey in the manner proposed by Mr. Roberts. If the Corporation can legally carry out the proposed plan in the bed of the River Liffey, Counsel will please say what fund at the disposal of the Corporation is legally applicable to defray the expenses thereof.

OPINION.

I have not been furnished with full copies of the charters granted from time to time to the Municipal Corporation of Dublin, but so far as the extracts sent, and the statutes to which I shall refer, enable me to form an opinion, I think it is reasonably clear that the soil and bed of the River Liffey are not vested in the Corporation, and that that body possesses certain limited rights only of fishing, ferrying, and the like, over the river. From Barrack-bridge to the sea, the river, its soil and bed, and

its quays and walls, are part of the Port of Dublin, and are subject to the jurisdiction of the Port and Docks Board, and not (except so far as I shall mention) to that of the Municipal Corporation. The Act 32 & 33 Vic., cap. 100, Local (the Dublin Port and Docks Act, 1869), both by continuing the former powers of the Ballast Board, and expressly by section 9, vests the care, management and superintendence of the port (including the bed of the river) in the Port and Docks Board, together with the building, repairs and maintenance of all the quay walls and embankments within the port. The legal position of the matter therefore appears to be that the Corporation have no control over the bed of the river, and no power of interfering with it, either as owners or as being charged by law with its management. The Port and Docks Board have the statutory control and power of management, and are under the obligation of maintaining the river in a proper state, and can prevent any unauthorized interference with it. It follows that if the Corporation have *any* powers for the purposes in question, they must be derived from the Sanitary Acts, which clearly constitute the Corporation the Nuisance Authority, and also the Sewers Authority for the City of Dublin, and place all localities within the city, including the river, under their jurisdiction for sanitary purposes. It may be assumed, that the Liffey in its present state is a nuisance dangerous to public health, but that it has become so by reason of the discharge of sewage into it from the sewers which are under the control of the Corporation. It may further be assumed, that for the urgent present purpose it is impossible to divert this sewage from the river, and that a temporary remedy only can be attempted, and must be carried out by some works

to be erected on the bed of the river, which is as I have stated under the control of the Port and Docks Board. It further appears that any work such as has been proposed *may* injuriously affect the navigation of the river. Under these circumstances, I am of opinion that the Corporation cannot now enter upon the bed of the river, nor execute any works there, except by leave of the Port and Docks Board, but that they may proceed under the Nuisances Removal Acts, 18 & 19 Vic., cap. 121, and 29 & 30 Vic., cap. 90, before the justices, for an order upon the Port and Docks Board to abate the existing nuisance, and on default in their obeying any order for such abatement, but not until then, the Corporation may enter and execute the necessary works under 18 & 19 Vic., cap. 121, sec. 11, but so as not in any case to interfere with the navigation. It is within the power of the Local Government Board, if the Corporation makes default in enforcing the Nuisances Removal Acts, as well as on default in providing sufficient sewers, to appoint some other person to perform the duty. I do not think that the present is a case of default in providing sufficient sewers, but I would not advise the Corporation to resist the making of an order upon their default under 29 & 30 Vic., cap. 90, sec. 49, if the Local Government Board should think itself competent to make it. I apprehend that if the Corporation should proceed against the Port and Docks Board, the Board may in turn proceed against the Corporation to prevent the discharge of the sewage into the river in such a manner as to create or continue the nuisance, and therefore this proceeding also is full of difficulty. The Corporation might apply to the Board for leave to execute the proposed works, but even if the leave were granted, the Corporation could not legally expend

the rates upon works which ought to be executed by the Board, and unless an order be obtained under the 49th section of 29 & 30 Vic., cap. 90, I do not think the Corporation can lawfully, or at least safely, pay any of the proposed expenditure. I am therefore of opinion that except by proceeding to compel the Port and Docks Board to abate the nuisance, at the risk of having a cross proceeding instituted against themselves, the Corporation are powerless in the matter, and that they cannot safely act except under the compulsion of an order of the Local Government Board. It is for that Board to consider whether the provisions of 29 & 30 Vic., cap. 90, apply to the present case. Having regard to the serious nature of the nuisance, I advise the Corporation to proceed against the Port and Docks Board, unless that Board will undertake to carry out the proposal of the Lord Lieutenant. Such a proceeding is within the powers of the Corporation as the Nuisance Authority of the city, and it is their duty to exercise these powers as effectually as possible, even at the risk I have pointed out. A notice should be immediately served on the Board, calling their attention to the Lord Lieutenant's letter, and to the fact that the bed of the river is under their management, and apprizing them that if they do not abate the nuisance existing there the Corporation must proceed against them under the Nuisances Removal Acts.

GERALD FITZGIBBON, Jun., Q.C.

10 Merrion-square, North,
June 24th, 1874.

CASE

On behalf of the Corporation Public Health Committee for Counsel to Advise.

Counsel has herewith copy of his former Case and Opinion upon the question of the right and powers of the Corporation of Dublin over the River Liffey, for the purpose of carrying out the plan proposed by the Government Engineer, Mr. Roberts, for the abatement of the existing nuisance.

Counsel will perceive that his attention was directed to the fact that part of the revenue of the Corporation was derived from the slippage and anchorage dues paid for vessels entering and frequenting the Liffey.

Counsel having stated that it was reasonably clear that the soil and bed of the river are not vested in the Corporation, and that it appears to be law that the Corporation have no control over the bed of the river, and no power of interfering with it, either as owners or as being charged by law with its management, the following letter was written to the *Irish Times* upon the subject, stating matters of which the Public Health Committee were then for the first time made aware:—

"LIFFEY NUISANCE.

"*To the Editor of the Irish Times.*

"CITY LAW AGENT'S OFFICE, 35 DAWSON-STREET,
"*Dublin, Monday, June 29th,* 1874.

"SIR,

"I had not until to-day an opportunity of examining the original case laid before Gerald Fitzgibbon, Esq., junr., Q.C., in reference to the Liffey Nuisance. I find that the copy opinion

omits the important word 'not.' It should read thus :—'I have *not* been furnished with full copies of the charters granted from time to time to the Municipal Corporation of Dublin;' but, 'so far as the extracts sent, and the statutes to which I shall refer enable me to form an opinion, I think it reasonably clear that the soil and bed of the River Liffey are not vested in the Corporation.' As Law and Land Agent of the Corporation, charged with the defence of their title, their landed estates, including the soil and bed of the River Liffey, I request leave, through your influential journal, to inform the citizens of Dublin that the above case was not prepared by me, but emanated from the Public Health Committee, upon hasty instruction to an intelligent solicitor of their own selection, according to the very limited information on the question of title available to that Committee. I shall, therefore, confine my remarks to that portion of the opinion which denies the title of the Corporation to the bed and soil of the River Liffey, and which, as I believe, would not have been given by the above named very eminent lawyer, if he had been referred to the published case, '*The Corporation of Dublin* v. *Wm. Thomas*,' which was an action brought by the Corporation of Dublin in the year 1827 for recovery of harbour dues, called 'slippage and anchorage' dues in the River Liffey and Port of Dublin. It was defended at the instigation of some of the most prominent members of the Dublin Chamber of Commerce and Ballast Board, and after three days' trial at bar in the Court of Queen's Bench, before a special jury of the county of Wicklow, a verdict was found for the Corporation for amount of dues then disputed, and the right of the Corporation to the bed and soil of the Liffey and harbour was solemnly established by the unanimous judgment of the full court, delivered after argument. The printed report of that case is to be found in several public libraries. I can fearlessly state that the same Royal Charters, and other documentary muniments of title, are now available for proof, in case the Corporation's title to their slippage and anchorage dues, for use of the bed and soil of the River Liffey, shall be again resisted. It will in that event be found that the statutes referred to in the learned gentleman's opinion have not transferred any legal or territorial estate previously vested in the Corporation, but merely granted regulating powers to the Ballast Board and Port and Docks Board. But I trust the present emergency will call forth something more immediately useful than the mere assertion of legal rights; the real question being *not* the purification of the Liffey, as the water is not required for drinking—but the real question is the stifling of its most abominable stench, according to some prompt and simple mode, as suggested by his Excellency, which, if immediately and honestly tried, may prove effectual, without plunging further into a ruinous increase of taxation, with a

doubtful and distant prospect of relief from a pestilential nuisance. I trust that the Corporation will boldly commence some remedial work in the bed of the river, and if any crotchet shall arise as to the proper fund for payment, such difficulty can be readily met by a Treasury order.

"Meanwhile, I am, Sir, yours most respectfully,

"FRANCIS MORGAN,

"*Corporation Law Agent.*"

The case above referred to, "The Corporation *v.* Thomas," was an action for anchorage dues payable by vessels anchoring in the bed of the river, and for slippage dues payable by ships using the slips formerly in use in the river for the purpose of loading and discharging cargoes.

The several charters to which Counsel was referred to in the preceding case for advice were in "The Corporation *v.* Thomas," placed under the consideration of the Court of Queen's Bench, Ireland, and much stress was laid upon the reservation by the Crown in the charter of John, of the prisage of wines imported. Sergeant Goold, the counsel for the Corporation, in his opening statement, says: "The Court will be of opinion that it is of great importance to attend to the words reserving prisage, because that is confessedly a duty payable to the Crown only, unless where granted away by the Crown by a forthcoming patent, or presumed to be so granted by consequence of an uninterrupted prescriptive usage of receiving the same by a subject. When, therefore, we find that the Crown, dealing with this Corporation in such ancient times, finds it necessary to reserve specially to itself the enjoyment of a branch of the Crown revenue, the presumption is strong indeed that the Crown regarded the Corporation as owners, for such a duty would not belong to the Corporation unless they were owners of the Port,

that is owners of the soil of the Port, or of the franchise of the Port, or of both."

With reference to the ownership of the bed or soil of the River Liffey, Sergeant Goold said, "you will recollect that by the second charter of John, half the river is granted to the Corporation to fish in, so that putting that grant and this of Edward I. together the Corporation have the whole of the river granted to them. It has been argued that nothing is given here but the fishing of the river. I contend that the river itself is granted, for here is a recognition that the soil itself is granted, 'reserving to us the mill places in the said river, which we have kept for our own use.' This is an actual reservation out of the soil and ground of the river upon which the mill places were erected.

"Here is an extract from the grant; here is permission to Corporation 'to build one bridge upon the river, wherever it shall appear most expedient to them.' How would they have a right to build a bridge unless in possession of the soil?

"This charter is, therefore, of the utmost importance, because it recognises the ownership of half the River Liffey belonging to the Corporation."

The evidence adduced at the trial was a number of leases by the Corporation to different persons, of ground upon the banks of the river, and upon the seashore. The practice of the periodical perambulations of the limits of the city, including the River Liffey, and the throwing of the "dart" into the sea by the Lord Mayor at low water mark.

The charters and the translations of them were also put in evidence, and much discussion was occasioned by reason of the translator having rendered the Latin word

"*aquæ*" (therein contained, and referring to the gift "*medictalem aquæ*" by the King to the citizens) by the word "River" instead of "the water." It has not been found possible to send to Counsel a copy of the entire report of the case, or of the evidence given, but the judgment of the court thereon is appended, from which Counsel will see the exact nature of the case made by the Corporation of Dublin, and the view the court took with reference to their right to the slippage and anchorage dues, and to the bed and soil of the River Liffey.

Counsel upon the entire case will please reconsider his former opinion, and alter it in any way he may deem advisable by reason of the decision of the Court of Queen's Bench in "The Corporation *v.* Thomas," aforesaid.

OPINION.

I have reconsidered my former opinion, and have also read the charges of the three judges of the Queen's Bench in the case of the Corporation of Dublin against Thomas, referred to by Mr. Morgan in his letter to the *Irish Times*. All the judges told the jury in that case that ownership of the soil and bed of the Liffey would not conclude the question at issue (which was as to the right to certain dues called slippage and anchorage), for that these dues might have been separately granted by the Crown, *or* might be charged in respect of such ownership. The jury were allowed to presume a grant of the dues, but the ground of the presumption may have been quite irrespective of the ownership of the bed and soil of the river. The trial took place in 1827, and the recent statute (the Dublin Port and Docks Act, 1869) to which I referred in my former opinion, answers Mr.

Morgan's objection to that opinion, so far as he believed it to throw doubt on the title of the Corporation to the slippage and anchorage dues, and also very much confirms my view that those dues are not paid by virtue of any ownership of the bed and soil of the river. Section 251 saves all rights of the Crown in the shore or bed of the sea, or of any river within the port of Dublin, and section 254 saves the "*rights, interests, claims, powers, privileges, authorities,* and *immunities*" of the Corporation "in respect of the port dues, or duties commonly known as slippage and anchorage, payable to them," as this is the same statute which not only vests the management of the bed of the river in the Dublin Port and Docks Board, but in section 92 prohibits the taking up of any sand or clay within 50 feet of the quay walls, and in sections 164 and 165 prohibits the throwing of any earth or other thing into the river, and particularly of any dirt or filth swept or taken from the streets by any scavenger or contractor, yet nowhere saves or refers to any estate or power of the Corporation in or over the bed of the river. I am, by its provisions, led to conclude without doubt that that body cannot lawfully erect any structure whatever upon that place except by permission of the Port and Docks Board. It is remarkable that the statute 6 Ann, cap. 20, after reciting that the river was "well nigh choaked" from Arran's-bridge to the Bar of the Port, made the Corporation conservators of the port, and empowered them to cleanse the channel by raising ballast therein, an enactment scarcely consistent with antecedent ownership. Those powers were afterwards transferred (having been found "ineffectual,") to the body commonly called the "Ballast Board," by 26 Geo. III., cap. 19, and through subsequent legislation have come to the Port and Docks

Board. No subsequent statute refers to any concurrent power of the Corporation over the bed of the river, though some, *e.g.*, 51 Geo. III., cap. 66, sec. 10, confer "the superintendence of the strands of the river on both sides from Barrack-bridge to the sea," on the Ballast Board, and some of the enactments render it very difficult to maintain (even on the ground of lengthened user) that it is lawful to discharge sewage into the river at all. Reconsideration has only confirmed my former opinion, and I think it right to add that the former case was very clear and full in statement, that it referred expressly to the slippage and anchorage dues, and that if a more complete recital of the patents could have been reasonably expected to have furnished any material information, I would have called for copies of them before writing my opinion. At the same time Mr. Morgan's reference to the case of the Corporation *v.* Thomas (which is not to be found in any available report), was valuable as affording me an opportnity of confirming my opinion on further consideration.

GERALD FITZGIBBON, Jun., Q.C.

10 Merrion-square, North,
July 6th, 1874.

The Corporation of Dublin v. *Thomas. Queen's Bench, Ireland*, 1827.

The Chief Justice, in charging the jury, said—Gentlemen of the jury, in this case the plaintiffs, the Corporation of the City of Dublin, seek to recover three sums—3s. 4d. for anchorage, 1s. for slippage, and 1s. 7½d. for chapter and guild, all Irish currency, alleged to be due by the defendant as the owner of a ship which appears to be of such a

description as to be liable to those duties, if legally demandable. The question is, whether these are or are not legal demands, and that depends partly upon matter of law, as to which the Court will give you their opinion, and partly upon matter of fact, as to which you are to decide. We are of opinion that the recital in one of the charters read in evidence shows that the City of Dublin had been a corporation before the time of legal memory, and a corporation capable of taking a grant of everything necessary to make those charges legal and reasonable claims. We are also of opinion that the grant of duties of such a nature, though it did not appear, may be presumed by the jury, if they believe that there has been a uniform usage to receive them. The meaning of this proposition has been already properly stated—that where a certain claim has been for a very great length of time continued without interruption and acquiesced in, this is, in the absence of other evidence, the strongest presumption of the legality of the demand. Gentlemen, independent of the presumption we are at liberty to make from the usage and acquiescence, there is a variety of circumstances in the present case going far to lead you to the same conclusion. There are, indeed, on the other hand, some facts which it is contended rebut such an inference. You may take both into your consideration as I shortly recapitulate the evidence. The first of those demands is that termed anchorage, which is a duty arising from the ownership of a port or river, and the allowance of the use of the soil for an anchor. If the Crown granted the port, or being entitled to the duty of anchorage, granted that duty in ancient times to the Corporation, in either case there would be a legal demand. With respect to the grant of the port, what has been proved may in the absence of

evidence to the contrary fairly be considered to have been in the same limits as those specified in the charter of John, and which appear to have existed in the time of Henry II., I say those limits may have included the Port of Dublin. You will recollect the particular boundaries at which they stopped on the north and south sides of the river. Besides, there is strong evidence of the lease made in the time of Elizabeth in 1582 to Ball. It is not here necessary to particularize it, but it was an Act of ownership by the Corporation of Dublin more consistent with the ownership of the port than with any other state of facts. At all events, it is consistent with that supposition and nothing else, and nothing else is alleged with which it could be more consistent. Having mentioned these circumstances, which are independent of the actual receipt of the duty, I have now to call your attention to the evidence of the payment of this demand called anchorage. It is proved to have been received by the Corporation from 1762 to 1823, a period of more than sixty years. If you be satisfied as to this fact, and the uniformity of the duty, I am to tell you that this is evidence abundantly sufficient to warrant the presumption of the grant. For seventeen years of this period—that is, to the year 1779—the duty was not received by an officer of the Custom House, so that during that time at least the usages are open to the objection of the confusion and lumping of different demands. The duty was paid into the hands of a person who farmed the anchorage from the city. When he also ceased, an officer of the Customs was employed by the city to collect the duty, he having, in virtue of his office, the control over the sailings of the ships under the authority of the Custom House. Even during the latter period, however, it appears by the evi-

dence that it was known in the Custom House that though Mr. Hamerton received those duties, it was for the city that he received them. The next demand to which I shall advert, although the last in order in the pleadings, is that called the chapter and guild. That depends upon the same ground as the anchorage, namely, ancient usage, with this difference, however, that the reasonableness of anchorage is plain, whereas the origin of the other is involved in total obscurity. Much ingenuity has been displayed in suggesting the probable explanation of the terms. That, however, is an immaterial inquiry if, in fact, the duty were originally granted by the Crown, and were paid by the trader to the owner of the port as part of the compensation for using that port. If there has been a continued usage, there may be in either of these grants a sufficient foundation to preserve the legal foundation for the claim; and with respect to the obscurity of the name, that very circumstance, as has been justly remarked, may be in itself evidence of the antiquity of the duty. It is said, however, for the defendant, that these sums were paid in a lump with others, and that the party relying upon a title of this sort must show that the party who has received the duty must have demanded it as a distinct thing, and that acquiescence, in order to be binding, must be after a distinct knowledge of the nature of the claim. So long as Adair held the anchorage that objection cannot apply. It can relate only to the subsequent period, and as relating to that it is well answered by Mr. Thomson's testimony, who stated that he, in the particulars of the charges, was able to describe one of them with great accuracy. I allude to the chapter and guild. Another objection is, that acquiescence to constitute a right must be uniform, and that here it was not so, inasmuch as

Mr. Hamerton received his fees, and demanded more than 3s. 4d., &c. In my opinion, that is not a well-founded objection. We cannot ascertain whether it was a justifiable thing to increase those fees, but that circumstance cannot affect the rights of the 3s. 4d. Upon both these demands of anchorage and chapter and guild, I shall ask you whether 3s. 4d. for anchorage has been uniformly claimed by the Corporation of Dublin as such, and uniformly paid by traders as such from the year 1762 to the year 1823, and in like manner, whether 1s. 7½d. has been paid and received for chapter and guild. If you answer in the affirmative, you are then at liberty to presume grants to the Corporation which would render those duties lawful. If you think otherwise, as to both or either, of course you will say so. The remaining consideration is as to the claim for slippage. This is distinguishable in some respects from the other two. The nature of this slippage is a demand by the owner of the banks of a river from the owner of a ship for the liberty of landing goods on those banks by the assistance of slips repaired and kept up by such owner. On the part of the plaintiffs evidence has been given of a grant by the Crown to them of the banks of the River Liffey, fortified by proof of enjoyment sought to be established in various ways—first by leases made of certain lots on the north and south sides of the river to different persons—Ellis, Temple, Lord Santry, Rogerson, and others—not merely existing among the archives of the city, but acted on to this day by payments of rent; and, secondly, by the strongest evidence of presentments by grand juries against the officers of the city for not repairing those slips, going to show their possession of them, and their consequent liability to their repair. If this was the origin of this right of slip-

page, the next inquiry is, what right there has been of this duty. As to the two slips in particular, viz., those on Wood-quay and Merchant's-quay, there is strong evidence, and it is to be considered whether that does not go a considerable way as to the rest. From 1765 to 1779 a sum of £3 a-year was paid to the city under the name of perquisites of the slips, and afterwards there was a receipt by Mr. Hamerton from 1783 to 1823. There is a chasm of two or three years during which he did not receive, but he swears that his predecessor, Mr. Large, had received before him. An objection in point of law has been made to this demand of slippage, and that is, that inasmuch as the Legislature of 1783 passed the Ballast Office Act, which places the slips and the banks of the river under the Ballast Board, they thereby put an end to this duty. It is the opinion of the Court that this is an unfounded objection, and that the Ballast Office Act merely took away from the city the superintendence of the slips, and did not interfere with the right of slippage, if it antecedently existed.

Mr. Justice Jebb—I shall content myself with addressing to you a very few words upon one topic—I mean the doctrine of presumption. It is a doctrine which, in my mind, ought, in such a case as this, to have a very favourable reception. In many instances, titles exist solely on this ground. If this was a case in which an estate in land was claimed, evidence of such an enjoyment as has been here proved would, if given by a defendant, have been a complete bar in point of law. A jury would not be required or called upon to make any presumption, but would be bound to infer a legal title from the length of enjoyment; for, by the statute law of the land, a possession for 60 years gives a complete title against all the

world. It is true, indeed, that, with respect to a claim like the present, the law is otherwise—that is, there is no statute such as I have above referred to, but the party claiming is bound to satisfy a jury, by the length of enjoyment, that at some very remote period, so long back as the reign of Richard I., there was a good origin as by grant from the Crown of his title. But though that is the case, yet courts of law, in order to put property of this nature upon a proper foundation, have acted in some degree in analogy to the Statute of Limitations, and where there is evidence to satisfy a jury of an uniform possession and enjoyment of such rights for a great length of time (particularly such a length of time as in cases of landed property would amount to a bar) they are in the habit of informing juries (not directing them to do so) that they are at liberty to presume a legal grant to validate such enjoyment. This is the principle upon which the statutes have proceeded, and also the ground of the doctrine of presumption. The foundation of both is, that it is not to be supposed that a person will be permitted, without interruption, to exercise a right for many years unless that right has a legal commencement. The policy of the law is, that it would be productive of much mischief if, after a long enjoyment of any property, the person who had enjoyed it would be deprived of it because he might not be able to produce his title deeds. Upon this natural ground, an indefeasible title to an estate may be acquired by mere length of possession. The present case, in my opinion, affords as strong an illustration of the wisdom and justice of this rule as any which has fallen within my observation ; for it appears that there was in existence a most important charter to this Corporation, which is not now in their possession, and of which the only evidence

is the recital in the charter of Edward I., lately found in the Tower of London. When so material a title deed is not to be found in the possession of the city of Dublin, does it not afford a strong proof of the wisdom and justice of the principle which empowers a Court to tell a jury that they may infer the existence of that which is not proved? Had not a search been made in the Tower of London, even that evidence of the existence of this charter could not have been produced.

Mr. Justice Burton—Much discussion has taken place with a view to show that the Corporation of the City of Dublin have been, from time immemorial, the owners of the Port of Dublin, and also of the soil and bed of the river, from which you are called upon to deduce that they are entitled emphatically to the duty of anchorage and the other duties now claimed. With respect to the former, it is clear, unquestionably, that if the Corporation had been from time immemorial the owners of the port or of the bed of the river, that fact affords a strong probability, indeed, that the present claim is well founded, and will properly lead you to a favourable consideration of the evidence of usage. But I conceive that though the Corporation be not the owners of the port or of the bed of the river, they may yet be entitled, from time immemorial, to this duty and anchorage, for the port and the soil may have belonged to the Crown, and the Crown may have separately granted the duty of anchorage, and, on the other hand, even though they were the owners of the port and soil, yet it would not, necessarily, follow that they were entitled to this duty, for they could not, merely as such owners, have charged the King's subjects with such an impost, or any other tax. They might, indeed, maintain an action for a trespass on their soil, but they could not levy a tax such as anchorage.

CASE

On behalf of the Municipal Corporation of the City of Dublin, in reference to their rights to the Bed and Soil of the River Liffey.

Herewith is sent a very authentic and valuable manuscript book, called Green's Epitome, being an abstract index to the several Royal Charters, granted to the Corporation of Dublin, in and since the reign of King Henry the Second.

Herewith is also sent another valuable manuscript book, known as Nash's Translation Book, containing full copies, Latin and English, in juxtaposition, of all the principal charters (with one exception) under which privileges, boundaries or limits have been granted to the Municipal Corporation of Dublin.

Herewith is also sent the appendix to the Report of the Commissioners on Municipal Corporations, Ireland, presented to Parliament, and printed in 1835.

Part 1. Relating to the city of Dublin (herewith sent).

Section 1 of said appendix declares the city of Dublin to be a county of itself, and refers to such charters as define its limits and boundaries. Sec. 2 of said appendix contains abstracts from several Royal Charters granted to the Corporation of Dublin, under which they claim to have derived public privileges, boundaries and lands.

Since printing of said Report of 1835, Mr. Morgan, Law Agent to the Corporation, had occasion to make a search in the Public Record Office, Chancery-lane,

London, in the year 1863, and then found an enrolment of another Royal Charter of the 17th year of King John, not previously noted in the printed Report of 1835, nor in any book of the Corporation, a copy of the enrolment of that charter, *in extenso*, will now be found in Green's Epitome, page 166.

The foregoing charter of 17th John, in consideration of the yearly fee-farm rent of 200 marks (£133 6s. 8d.) to the citizens of Dublin "their city of Dublin in fee-farm together with that part of the river of Avenlithe which belongs to them, together with *our part* of the same river which belongs to us, excepting the fishing of the boats which we have formerly given in fee alms, and other fishings of boats which others possess by ancient tenure, and survey to us the mill seats in same river which we have retained for our own use. Rendering thereout to us, our heirs and successors, every year at our exchequer of Dublin, two hundred marks, that is to say, at the feast of Saint Michael 100 marks, and at Easter following 100 marks. To hold to the said citizens and their successors for ever."—See full copy of said charter of 17th John in Green's Epitome (sent), p. 166.

Sec. 10, page 4, of said appendix to the said Report of 1835, contains an abstract of a Royal Charter of the first year of the reign of King Henry the Third, which granted to the citizens of Dublin and confirmed to them, their customs and liberties as granted by charters of Henry the Second, Richard the First, and John, with the provostship in fee-farm, and that part of *the water of the Liffey which belonged to them, together with that part of same river which had belonged to the King*, excepting certain boat fishings and mill sites. Rendering to the King and his heirs, at his exchequer, 200 marks yearly.

King Charles the Second, by his charter of date in margin, committed the ferries over the River Liffey to the charge of the Corporation of Dublin and their successors, with liberty to carry passengers over said water, and granted to them and their successors all fees to arise therefrom, subject to the yearly Crown rent of £4 Irish; no other person to keep boat for gain or hire at any place from bridge of Dublin to Ringsend. This rent is paid as part of £20 per year, reduced Crown rent, to the Collector of Inland Revenue, Custom House, Dublin. The ferries are demised by one lease, annual rent, £309 4s. 6d. 1665, May 22, 17 Charles 2.

The said fee-farm rent of 200 marks and £4 Irish for right of ferries were, by charter, reduced in the 18th year of the reign of King Charles the Second, A.D. 1666, to £20 per year, then currency, which is still paid by the Corporation, yearly or half-yearly, to the Collector of Inland Revenue, at his office, Custom House, Dublin.

It appears by the most authentic histories of Ireland, and the records of the Municipal Corporation of Dublin, that discreet and efficient persons had been, from time to time, chosen by that Corporation to discharge the important public duties confided to their administration, and that the Lord Mayors of Dublin, in early times, were recognised as Admirals of the Port of Dublin, and that Water Bailiffs first appointed to regulate the shipping in the River Liffey and Harbour of Dublin, were in the reign of Queen Elizabeth recognised as under sheriffs of the city of Dublin, and principally to assist the Lord Mayors in discharge of their Admiralty functions on the river and Port of Dublin, and to receive the dues paid from the earliest periods to the Corporation as owners of the bed and soil of the River Liffey, by owners or captains of all vessels frequenting the port. These harbour dues, known

as slippage and anchorage dues, were during a long period of years collected for the Corporation direct by their water bailiffs.

6th Anne, cap. 20, anno 1707.

It appears by the Appendix to said Report of 1835, page 139, that the Act 6th Anne, cap. 20, was passed by the Irish Parliament in 1707, on petition of the Municipal Corporation of Dublin, to authorize and facilitate the sale of a portion of the north bed of the River Liffey, adjoining to Clontarf, and that, at the request of the Lord High Admiral, the Corporation of Dublin were, by the same Act, empowered to erect a Ballast Office; and that certain persons named in said Act were appointed to act as a separate Board, called the Ballast Board.

By subsequent statute, the 43rd Geo. 3rd, cap. 127, the Ballast Board were empowered to levy a tax to rebuild the walls from Carlisle Bridge westward to Barrack Bridge, on both sides of the river, at the rate of 2s. per foot for such reconstruction and preservation of the walls of the River Liffey. The last-mentioned Act was repealed by the Act 1 & 2 Vic., cap. 36; and the 17th Vic., cap. 22, was passed on 16th June, 1854, to provide for past and future repairs of Quay walls of and bridges over the River Liffey.

1 & 2 Vic., cap. 36; 17 Vic., cap. 22.

You are particularly referred to the foregoing Acts, authorizing and repealing Quay-wall tax westward of Carlisle Bridge; but it is submitted for your consideration that none of said Acts takes from the Municipal Corporation or conveys to the Ballast Board any title to the bed and soil of the River Liffey.

About the beginning of the present century an arrangement was made by the Corporation with Mr. Hamerton, a Custom House Officer, to collect the slippage and anchorage dues for the Corporation at his office, in

the Long Room, Custom House. From some cause or other, ship brokers and ship captains objected to make their payments regularly, and some threatened total refusal.

A very large majority of the Corporation of Dublin were at that period distinguished only by their religious and political bigotry, and were consequently very unpopular with the citizens at large. It was not, therefore, difficult to excite opposition to the payment of their harbour dues. It was believed that such opposition was then countenanced, if not promoted, by prominent members of the Chamber of Commerce and Ballast Board.

Proceedings to enforce payment were commenced by action in the Court of King's Bench in 1827, in the case of Corporation of Dublin *v.* William Thomas, for recovery from defendant, as captain of a vessel frequenting the Port of Dublin, of payment of harbour dues to plaintiffs, which eventuated in a trial at Bar, before the four Judges of that Court and a special jury of the county of Wicklow. Most of the eminent counsel of the Irish Bar were engaged on either side. The trial lasted three days, 12th, 13th, and 14th November, 1827, when a verdict was given for plaintiffs, which was subsequently confirmed upon solemn argument, and judgment was entered for plaintiffs for the full amount claimed.

You are referred to the printed copy report of that trial herewith sent, showing that the verdict in that case clearly established the right of (the plaintiffs) the Municipal Corporation of Dublin to the bed and soil of the River Liffey. Although some ship-brokers and ship captains have since threatened refusal to pay these slippage and anchorage dues, no proceeding has been taken in any court of law since 1827 to disturb the verdict and judg-

ment of the Court of King's Bench, obtained on above trial.—See printed Report sent.

The slippage and anchorage dues were, in the year 1851, conveyed in mortgage to secure payment of a loan obtained from the Hibernian Bank by the Corporation, with consent of the Treasury, and said loan has been since paid off.

It will also appear, by reference to Ball's Index to the Irish Ante-Union Statutes, that several Acts were passed for establishment of a Ballast Office in and for the Port of Dublin, viz. :—

1707. 6th Anne, cap. 20, vol. 4 Irish Statutes, page 170.
6th George I., cap. 15, sec. 6 & 7, do. „ 550.
10th George I., „ 3, „ 25 & 26, vol. 5 do., „ 99.
3rd George III., „ 13, „ 9 do., „ 63.

The foregoing Acts were repealed by the Act—

26th George III., cap. 19, vol. 13 Irish Statutes, page 663.

The Ballast Board were authorized, under said last-mentioned Act, and were empowered to collect a tax of 2s. per foot for construction and maintenance of quay wall, westward of Carlisle Bridge. See also

32 Geo. III., cap. 35, vol. 16 Irish Statutes, page

You are also referred to the following Acts, passed in the Imperial Parliament, in reference to the Liffey Quay walls :—

1 & 2 Vic., cap, 36, passed in 1838,
17 Vic., cap. 22, passed 16th June, 1854.

A large share of public attention has been lately directed to the state of the bed of the River Liffey, within the city of Dublin, from Island Bridge to Carlisle Bridge, particularly to that portion eastward of King's Bridge, where large deposits of mud are occasionally formed upon

that portion of the bed or channel of the river within about 20 feet of the walls on either side, and several sewers at various points of elevation now discharge sewage composed of putrid animal and vegetable matter into the margin of the river on both sides. These sewers, for the most part constructed through square openings in the quay walls, not only emit very offensive odours, but by their fall, during low water, disturb the muddy deposits already referred to, on the margin of the river bed, so that in summer, while the flow of river water is usually low, the action of the sewers and sun on the mud produces vapours which, if not actually pestilential and dangerous to health, are universally complained of as most disgusting to passengers and inhabitants of houses on the Liffey Quay, so much so that the Lord Chief Justice of Ireland has repeatedly and publicly complained of that nuisance, which has so far increased during the past summer that His Excellency the Lord Lieutenant has, through his Secretary, lately directed the earnest attention of the Municipal Corporation to the adoption of such speedy measure as would be likely to give effectual relief from an admitted public nuisance.

His Excellency, with same communication, forwarded to the Corporation the outline of a temporary measure of relief, by construction of a weir and flood-gates close to Carlisle Bridge, which plan was immediately transmitted, by order of the Council, to the Dublin Port and Docks Board, with another plan proposed by Sir John Arnott, to be executed at his own expense, and requesting the concurrence of that Board to the plan suggested by His Excellency or that of Sir John Arnott. These plans were referred by the Port and Docks Board for examination of their engineer, Mr. Stoney, who reported

to his Board that he could not approve of either of the proposed plans; and upon such communication from the Port and Docks Board, some members of the Corporation rather hastily concluded that the Port and Docks Board had passed a resolution or other intimation to interfere and prevent the commencement of any works promoted by the Municipal Corporation in the bed of the River Liffey, without the previous consent of the Port and Docks Board. Some members of the Corporation, who are also members of the Board of Health, constituted under the Sanitary Acts of 1866, perhaps anxious to relieve the Municipal Corporation from the imputation of inactivity, procured a case to be prepared for opinion of eminent counsel, G. Fitzgibbon, Esq., Junr., by a solicitor who had not access to or been aware of the title of the Corporation to the bed and soil of the River Liffey, as above disclosed, whereby an opinion (copy sent) was published to the effect that no works could be constructed in the bed of the River Liffey within the city, except under direction of the Dublin Port and Docks Board; but that Board had not offered any obstruction further than to refer the plans to their solicitor and engineer, and signified their intention to abide by that opinion, and excused themselves from taking any direct action by the fact that they had not any money legally applicable to the purification of the River Liffey, for which the Corporation had promoted and lately obtained an Act of Parliament, which was found to be more expensive in operation than had been supposed by those who had taken an active part in its promotion, without mature calculations of its actual cost.—See correspondence with Port and Docks Board, sent.

You are also referred to the Act passed

in known as the Main Drainage Act
copy will be sent.

Your opinion is therefore requested.

Having regard to the several Royal Charters, Irish Statutes, Report of Judgment in the case of Corporation of Dublin *v.* Thomas, Report of Commissioners of Corporate Inquiry, 1835, the Imperial Statutes above referred to, and opinion of G. Fitzgibbon, Esq., Q.C., whether the Corporation are owners in fee of the bed and soil of the River Liffey, westward of Carlisle Bridge, having sufficient legal authority to promote and construct such works in the bed of that river not inconsistent with the rights of the public to its navigation, as would, according to the best engineering advice they can procure, prevent the continuance of the offensive nuisance so extensively and justly complained of last summer, and so likely to increase every year.

OPINION.

I have read the several documents referred to in this Case, and I am of opinion that the Corporation of Dublin are the owners in fee of the soil and bed of that portion of the River Liffey comprised within the ancient bounds of the City of Dublin.

At the same time, I am of opinion that the Corporation have at present no power over the soil or bed of the river from Barrack-bridge to the sea—that they cannot originate or carry out works in the bed of that part of the river for

the purpose of cleansing it—and that the Port and Docks Board are the only parties who have authority to do so.

This state of things is the result of a long course of legislation, both in the Irish and Imperial Parliaments, dealing with the River Liffey and the Port of Dublin. By it, in my opinion, the Legislature has deprived the Corporation of Dublin of all dominion over their property in the Liffey westward of Barrack-bridge, and, for all practical purposes, the Dublin Port and Docks Board are now the owners of that portion of the river.

The first Act bearing substantially on this subject is the 32 Geo. III., cap. 35, passed in 1792. Eighty-five years previously the Corporation had sought and obtained from the Legislature larger powers than they possessed at Common Law for improving the River and Port of Dublin, but, for reasons unnecessary to go into, these statutable powers were taken from them in 1786, and were, by the 26 Geo. III., cap. 19, transferred to a newly-created body, called "The Corporation for Preserving and Improving the Port of Dublin," which was subsequently generally known as the Ballast Board of Dublin. The Ballast Board, however, by this Act only obtained the statutable rights conferred on the Corporation over the River and Port of Dublin, with some additional powers which the Legislature then gave them: the Corporation still retained their Common Law rights over the river, which was their property: and it was to put an end to this dual system of government over the Liffey, which was found inconvenient, that the Act to which I have referred to above, the 32 Geo. III., cap. 35, was passed in 1792.

That Act, after reciting that the River Liffey "was "choked up with mud and filth," and that the walls and quays bounding the river were "in a dangerous and

"ruinous condition," and that it was expedient for the remedy of this state of things "that the care of the said "river and the said walls bounding the same" should be vested in the Ballast Board, goes on to enact "that the "care, management, and superintendence of the whole of "said River Anna Liffey, and the walls bounding the "same," from Carlisle-bridge to the sea, "shall be, from the "passing of this Act, fully and *exclusively* vested in the "Corporation for Preserving and Improving the Port of "Dublin and their successors for ever." From the language of this Act it would appear that the Ballast Board got the superintendence of the *whole* of the River Liffey in Dublin; but from clauses contained in it, it might perhaps have been contended that they only got the superintendence of the river below Carlisle-bridge. However, subsequent legislation set this question at rest; for the 43 Geo. III, cap. 127, passed in 1803, gave to the Ballast Board expressly the care and management of the river, and the walls bounding the same, from Carlisle-bridge up to Barrack-bridge. To prevent, too, all doubt in the matter, in 1811 another Act was passed (the 51 Geo. III., cap. 66), the tenth section of which vested in the Ballast Board and their successors, "*to all intents and purposes whatsoever*," the "care, management, and superintendence "of the said River of Anna Liffey, and of the quays and "walls bounding the same, from Barrack-bridge, otherwise "Bloody-bridge," to the sea, and, showing thereby that the intention of the Legislature was to vest this part of the river substantially in the Ballast Board, it went on to provide (sec. 11) that nothing therein contained should affect the right of the Grand Jury of the City of Dublin to make presentments for bridges over the Liffey, or to appoint overseers to superintend the erection of these

bridges. The Ballast Board ceased to exist in 1868; the Dublin Port and Docks Board are their successors: they have now the jurisdiction the Ballast Board had over the Port of Dublin; and in their Act of 1869 the Port of Dublin is defined to commence at Barrack-bridge, so that the care and superintendence of the portion of the River Liffey, from that bridge downward to the sea, is now vested in the Port and Docks Board *exclusively*.

The main objects of the Acts I have referred to was to improve the Port of Dublin, but, as one means of doing this, the Legislature evidently intended that the Liffey should be cleansed and kept clean by the Ballast Board. The first Act which gave the control and management of the Liffey to the Ballast Board recited (as I have stated) that the river was then "choked up with mud and filth," and it was to remedy this the river was transferred to the Ballast Board; and in 1803 the same object, it is plain, was intended to be carried out by the Act then passed (43 Geo. III., cap. 127); for sec. 26, after reciting "that the bed of the river, between Carlisle-bridge and "Barrack-bridge, would be effectively cleaned, and, by the "building of the walls aforesaid, would be kept clean, "whereby the Port of Dublin would be improved," goes on to empower the Directors of Inland Navigation in Ireland, out of the £500,000 they had then in their hands, to grant to the Ballast Board £15,000, to enable that Board to carry out the necessary works for cleansing and walling in the river from Carlisle to Barrack-bridge.

As the question is one of importance, I have gone into greater detail than on an ordinary subject I would have done to show the ground on which I consider the Port and Docks Board and not the Corporation are to be blamed—if blame there be on any body—for the present

state of the River Liffey. I am clearly of opinion that the Port and Docks Board are liable to abate the nuisance in the Liffey, if it can be abated by any temporary means; and that if they neglect their duty they can be compelled to discharge it, as they have the sole control and management of the river, from Barrack-bridge to the sea. The Corporation has no power over that portion of the river, and, if inclined to do so, they could not carry out the suggestion of his Excellency the Lord Lieutenant, or accept the offer of Sir John Arnott. On the other hand, the Port and Docks Board can adopt any plan they may think effective for the cleansing of the river, without asking the sanction or consent of the Corporation, subject only to this condition—that the plan they may adopt is not an injury to the navigation of the river up to Island-bridge. If they were to erect anything in the river that would obstruct this navigation, they would be liable to an indictment, and they would be subject to pay the expense and costs of removing it. The Corporation have obtained power from Parliament, under their Main Drainage Act, to make intercepting sewers so as, in future time, to prevent the Liffey from being what it is now, the main sewer of Dublin, but, until this work is accomplished, the Liffey must remain the nuisance it is, unless the Port and Docks Board take, or are compelled to take, some steps temporarily to abate the nuisance, either by dredging, or by some other mechanical means cleansing the river, or by some legal mode getting rid of the noxious effluvia which now emanates from the Liffey. On them, as I have said, and not on the Corporation, the whole responsibility rests, and it is their duty to endeavour to provide a remedy for the evil which is so much complained of.

I have only to add that above Barrack-bridge the Corporation can deal with the river as they like, and they can, in my opinion, adopt any plan they may think advisable for cleansing that part of the river, provided they do not interfere with its navigation.

COLMAN M. O'LOGHLEN.

September 15*th*, 1874.